IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

Crl.MC.No. 612 of 2007()

CMP 288/07 IN EXCISE CRIME NO.200/07 IF J.F.C.M.-II, CHENGANNUR

PETITIONER: IST ACCUSED

P.SURESH KUMAR, S/O.PEETHAMBARAN,
AGED 32 YEARS, RESIDING AT BHARGAVI NILAYAM,
ENNAKADU VILLAGE, CHENGANNUR TALUK THROUGH HIS
POWER OF ATTORNEY HOLDER SUNDARESHAN, S/O.
PEETHAMBARAN, AGED 45 YEARS, RESIDING AT BHARGAVI
NILAYAM, ENNAKADU VILLAGE, CHENGANNUR TALUK.

BY ADV. SRI.A.SHAFEEK

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE EXCISE SUB INSPECTOR, RANGE OFFICE,
CHENGANNUR THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 612 OF 2007

Dated this the 13th day of March, 2007

ORDER

The petitioner is the 1st accused in a prosecution under Sec.55(a) of the Abkari Act. A Maruthi Alto car belonging to him has been seized on the allegation that the same was used for illicit transportation of spirit. The seizure was effected as early as on 3/11/06. It continues in the custody of the officials. The seizure has been reported to the learned Magistrate. An application was filed under Sec.451 of the Cr.P.C. for release of the vehicle to the custody of the petitioner. That petition was dismissed by the learned Magistrate by the impugned order. The impugned order suggests that pendency of the proceedings under Sec.67(B) of the Abklari Act is the only reason for the learned Magistrate dismissing the application. The petitioner has come to this Court with the grievance that no proceedings under Sec.67(B) of the Abkari Act has been initiated by now. In these circumstances, it is submitted that the rejection of the prayer

for release of the vehicle under Sec.451 of the Cr.P.C. is not justified.

2. The learned Public Prosecutor was directed to take instructions. The learned Public Prosecutor submits that the State has no objection in the vehicle being released to the petitioner temporarily subject to imposition of such conditions as are referred to in **Prasad v. Sub Inspector of Police** (2000 (2) KLT 790). The interests of justice shall be secured if such release is made subject to appropriate orders, it is prayed. The learned Public Prosecutor is unable to satisfy this Court whether anything tangible has been done in the proceedings under Sec.67(B) of the Abkari Act so far.

3. Having considered all the relevant inputs, I am satisfied that this will be an eminently fit case where the vehicle can be directed to be released to the person entitled to possession there of subject to appropriate conditions. The apprehension aired by the learned Public Prosecutor can allay by imposing appropriate conditions.

4. In the result, this Crl.M.C. is allowed. The following directions are issued under Sec.451 of the Cr.P.C:

(i) The vehicle shall be released to the petitioner subject to production by him before the learned Magistrate of all the documents to show that he is the person entitled to keep possession of the vehicle.

(ii) He shall execute a bond for an amount equivalent to the value of the vehicle to be ascertained and fixed by the learned Magistrate.

(iii) He shall produce a bank guarantee or deposit such value of the vehicle before the learned Magistrate as cash security.

(iv) The petitioner shall in the bond undertake to comply with the directions issued under Sec.67(B) of the Abkari Act also.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge